

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. **76-875**

**DONALD RATLIFF, SHELBY T.
ABNEY, JAMES GAY, EDGAR REED,
PAUL EBORG, LARRY KACHENMIESTER,
JOANNA C. AMBURGEY, DONALD
BOWEN and CHARLES HISLE,**
individually and as members and representa-
tives of a class consisting of all civilian
employees of the LEXINGTON-BLUE
GRASS ARMY DEPOT at Avon, Kentucky . . PETITIONERS

VS:

**LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT** **RESPONDENT**

**PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF KENTUCKY**

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INDEX

Page

Opinion Below	2
Jurisdiction	2
Questions Presented	2
Constitutional Provisions Involved	2-3
Statement of Case	3-4
Reasons for Granting Writ	5-8
I. The Tax Imposed on Petitioners Takes Their Property Without Due Process of Law as Prohibited By The Fourteenth Amendment To The United States Constitution.	5-8
Conclusion	8
Certificate of Service	9

TABLE OF CITATIONS

CASES:	Page
<i>Dane v. Jackson</i> , 256 U.S. 589	5, 7, 8
<i>Miller Brothers Co. v. Maryland</i> , 347 U.S. 340	6, 7
<i>Wisconsin v. J. C. Penney Co.</i> , 311 U.S. 435	6, 7

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VS:

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GOVERNMENT..... RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF KENTUCKY

The petitioners, Donald Ratliff, Shelby T.
Abney, James Gay, Edgar Reed, Paul Eborg, Larry
Kachenmiester, Joanna C. Amburgey, Donald
Bowen and Charles Hisle, individually and as
members and representatives of a class consisting of
all civilian employees of the Lexington-Blue Grass

Army Depot, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of Kentucky entered in this proceeding on October 1, 1976.

OPINION BELOW

The opinion of the Supreme Court of Kentucky appears in the appendix hereto.

JURISDICTION

The judgment of the Supreme Court of Kentucky was entered on June 25, 1976. A timely petition for rehearing was denied on October 1, 1976, and this petition writ of for certiorari was filed within ninety (90) days of that date. This Court's jurisdiction is invoked under 28 U.S.C. 1257(3).

QUESTION PRESENTED

WHETHER THE LICENSE FEE ADOPTED BY RESPONDENT VIOLATES PETITIONERS' PROTECTION AGAINST THE TAKING OF THEIR PROPERTY WITHOUT DUE PROCESS OF LAW UNDER THE 14th AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment 14:
Section 1:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

In May, 1972 the City of Lexington, Kentucky enacted a license fee (otherwise known as an occupational tax) that provided for a 2% annual tax on wages and salaries earned within the City boundaries. On January 1, 1974, the City of Lexington merged with its County, Fayette, into one governmental unit becoming known as the Lexington-Fayette Urban County Government. This was accomplished by popular vote of the City and County residents. These voters also approved a charter, Section 15.09 of which provided that all ordinances of the former City Government automatically became ordinances of the new urban government, thereby extending the license fee throughout the entire county.

All petitioners and their class are employed at a United States military installation located in the

northeast quadrant of Fayette County, bordering Bourbon and Clark Counties. About 50 acres of the entire 780 acre complex lies in Bourbon County. There are approximately 3600 civilian employees at the depot, of which 2052 reside out Fayette County.

The depot is owned by the United States Government and is entirely self contained. No benefits or service of any kind or nature are provided by the respondent. The petitioners who live at points east of the depot use only about one-fourth mile or less of roads in Fayette County in going to and from work. Once inside employees receive no service of any kind from respondent.

Petitioners filed a class action suit in the Fayette Circuit Court, Lexington, Kentucky, to have the license fee declared invalid as to them. Petitioners claimed, among other things, that the burden imposed by the license fee so greatly outweighed any benefit received by appellants, that it took their property without due process of law in violation of the 14th amendment to the United States Constitution. The lower Court concluded it did not and rendered judgment against petitioners, whereupon an appeal was taken to the Kentucky Supreme Court. The due process argument was again raised. The Kentucky Supreme Court held, in substance, that the mere fact of working in a federal area surrounded by an area under the control of a local government was a sufficient benefit to justify the tax.

REASON FOR GRANTING THE WRIT

I. THE TAX IMPOSED ON PETITIONERS TAKES THEIR PROPERTY WITHOUT DUE PROCESS OF LAW AS PROHIBITED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

It is the contention of petitioners that there is such disparity between the benefits provided to them by the respondent and the burden imposed by the license fee as to render the tax a violation of their right to due process of law under the United States Constitution. The tax takes their property devoid of this guarantee.

In the case of *Dane v. Jackson*, 256 U.S. 589, the Court had before it the issue of whether a state income tax on intangible property could be collected from the state generally and its proceeds returned to local municipalities in unequal amounts as compared to the amounts local citizens had paid to the state for the tax. The due process argument was at issue. Although the tax was upheld, the Court enunciated basic principals which are relevant here. We quote from the opinion, page 569, as follows:

"... a state tax law will be held to conflict with the Fourteenth Amendment only where it proposes, or clearly results in, such flagrant and palpable inequality between the burden imposed and the benefit received, as to amount

to the arbitrary taking of property without compensation — 'to spoilation under the guise of exerting the power of taxing.' "

The Court held that there must be "extreme inequality".

In the 1940 case, styled *Wisconsin v. J. C. Penney Co.*, 311 U.S. 435, the United States Supreme Court again affirmed this principal: (page 444)

"That test is whether property taken without due process of law, or whether the taxing power exerted by the state bears fiscal relation to protection, opportunities and benefits given by the state. The simple but controlling question is whether the state has given anything for which it can ask return."

The Court again applied this rule in 1954 in *Miller Brothers Co. v. Maryland*, 347 U.S. 340. It held that due process requires some definite link, some minimum connection, between a taxing authority and the person, property or transaction it seeks to tax.

There was never any type of evidentiary hearing in the Fayette Circuit Court (where the suit originated) to determine what, if any, benefits the respondent bestows on petitioners that would justify the tax. Moreover, the Kentucky Supreme Court, in its opinion, treated the mere fact of working within the federal area as sufficient benefit to warrant the

tax. Additionally, it implies that the Congressional Act, commonly referred to as the "Buck Act" implies that such a fact is adequate to satisfy due process. This is an erroneous conclusion on its face since congress has no authority to enact states contrary to the constitution.

If the Kentucky Supreme Court is correct in its reasoning, the principals laid down by *Dane v. Jackson*, *Wisconsin v. J. C. Penney Co.*, and *Miller Brothers Co. v. Maryland*, all supra, are nothing more than shibboleths. While at work in the Army Depot petitioners receive absolutely no benefits of any description from respondent. It is an entirely self contained federal area. It has its own police, ambulance and medical service, utilities, garbage disposal, restaurants, etc. In fact, the Lexington-Fayette Urban County Government has no jurisdiction in the conclave.

Petitioners class consists of about 3600 employees. Approximately 2052 of the number are non-residents of Fayette County. The petitioners who live east of Fayette County use only about one-fourth mile of roads in the County, going to and from work. In the lower Court we asked, alternatively, that the tax be voided as to these persons. Applying the "burden versus benefit" test, we have a 2% tax levied on an employee's gross earned salary. At the same time, the employee receives no service from respondent while at work. The employees living east

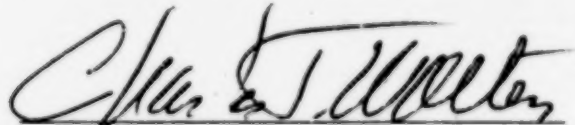
of Fayette County travel on that county's roads only about one-half mile per day. It is obvious that there is the extreme inequality mentioned in *Dane v. Jackson*, supra.

We contend that this case ought to be put back to the Fayette Circuit Court for a determination of whether there exists sufficient benefits given to any of petitioners to satisfy due process under the fourteenth amendment.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Kentucky Supreme Court.

Respectfully submitted,



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Attorney for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of December, 1976, three copies of the Petition for Writ of Certiorari were mailed, postage prepaid, to _____

Counsel for respondent. I further certify that all parties required to be served have been served.

CHARLES T. WALTERS
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Attorney for Petitioners

APPENDIX

RENDERED: June 25, 1976

SUPREME COURT OF KENTUCKY

75-529

DONALD RATLIFF, ET AL.,
INDIVIDUALLY, ETC.

APPELLANTS

VS.

APPEAL FROM FAYETTE CIRCUIT COURT
THIRD DIVISION
HONORABLE ARMAND ANGELUCCI, JUDGE
CIVIL ACTION NO. 74-2220

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT

APPELLEE

PER CURIAM
AFFIRMING

Appellants, employees of the United States military installation at Avon, sought to have a license fee ordinance of the Lexington-Fayette Urban County Government declared invalid. The trial court dismissed the complaint because it failed to state a claim upon which relief could be granted.

Appellants admit that an ordinance imposing a license fee is a proper exercise of the constitutional and statutory powers of appellee, and that such a tax

may be applied to federal employees.¹ They contend, however, that the ordinance involved in the present case was not legally adopted, and that the ordinance violates appellants' constitutional rights by taking property without due process of law. The opinion will be concerned only with these two arguments.

Section 15.09 of the charter under which the Lexington-Fayette Urban County Government was formed provided:

"All ordinances and resolutions of the City of Lexington * * * which are not inconsistent with the terms and provisions of this Charter shall be effective as ordinances and resolutions of the Lexington-Fayette Urban County Government until they have been repealed, modified or amended."

Validity of the proceedings in the forming of the Lexington-Fayette Urban County Government and KRS Chapter 67A, authorizing merger of city and county governments, was upheld in *Holsclaw v. Stephens*, Ky., 507 S.W. 2d 462 (1974). See also *Pinchback v. Stephens*, Ky., 484 S.W. 2d 327 (1972). No case involving the exact issue at hand has been cited by either party, but analogies may be drawn from annexation cases. In *Commissioners of Sinking*

1. Such was the holding in the recent case, *Patrick, et al. v. City of Frankfort*, Ky., _____ S.W. 2d _____ (decided May 28, 1976).

Fund v. Howard, Ky., 248 S.W. 2d 340 (1952), it was held that the city had power to annex a federal area so that persons working in the area would come within the terms of the license-tax ordinance. There, as in the present case, employees not originally within the taxing district became subject to the tax upon annexation without a new ordinance being enacted. In 2 *McQuillin, Municipal Corporations*, section 8.23, pages 599 and 600 (3rd, Ed. 1966), it is said:

"It may be provided that upon consolidation the ordinances of both municipalities shall become effective throughout their combined territories, until amended or repealed by the governing body of the consolidated municipality, with the ordinances of the larger of the two former municipalities taking precedence over ordinances of the smaller, in case of conflict."

See also *City of Pittsburgh v. Pennsylvania Railroad*, 394 Pa. 58, 145 A. 2d 700 (1958).

One factor in favor of upholding the ordinance, that should not be ignored, is that a majority of the voters of Fayette County approved the merger charter, which contained the provision that existing ordinances of the City of Lexington would become effective as ordinances of the urban county government.

Appellants contend that enforcement of the license fee amounts to the taking of property without due process of law. With the enactment of 4 U.S.C.A., section 106, which is part of what is popularly known as the Buck Act, Congress authorized a local taxing district to levy an income tax² upon the income of persons working within a federal area. In *Howard v. Commissioners of Sinking Fund*, 344 U.S. 624 (1953), the court recognized that the Buck Act gave a municipality the right to levy an income tax on federal employees working on federally owned land on which a naval ordinance plant was located.

We believe there are benefits, substantial and realistic, conferred by the urban county government on the employees at Avon. The installation is surrounded by the taxing district. The employees in going to and from work receive police protection and use roadways built or maintained by the urban county government. The urban county government furnishes the employees, along with other persons, with public facilities. Beautiful landscapes and other esthetic benefits are provided. It might well be inferred that Congress, by passage of the Buck Act, acknowledged that inherent in the privilege of working within a federal enclave, surrounded by an

² 4 U.S.C.A., section 110, defines "income tax" as a tax levied with respect to net income, gross income, or gross receipts.

area under the control of a local government, was a benefit sufficient to support a local income tax. See *Kiker v. City of Philadelphia*, 346 Pa. 624, 31 A. 2d 289 (1943), certiorari denied 320 U.S. 741. Also the fact that there are greater benefits bestowed on some employees in the taxing district than on others is not important. Cf. *City of Louisville v. Sebree*, 308 Ky. 420, 214 S.W. 2d 248 (1948); *Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495 (1937).

The judgment is affirmed.

All concur except Reed, C.J., who concurs in result only.

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* * * * *



Supreme Court of Kentucky

MANDATE

Donald Ratliff, Et Al

File No. 75-529
VS. Opinion Rendered October 1, 1976

Appeal From Fayette
Circuit Court Action No. 74-2220

~~Lexington Fayette Urban County Government~~

The Court being sufficiently advised, delivered herein an opinion per curiam, and it seems to them there is no error in the judgment herein.

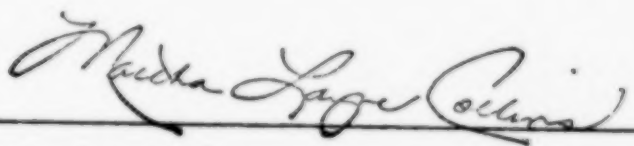
It is therefore considered that said judgment be affirmed; which is ordered to be certified to said court.

It is further considered that the appellee recover of the appellant its cost herein expended.

Appellant's Petition for Rehearing Denied.

A Copy - Attest:

Issued October 1, 1976


MARTHA LAYNE COLLINS, CLERK